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The Natural Law and Distributive Justice

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THE NATURAL LAW AND DISTRIBUTIVE JUSTICE

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IT IS COMMON KNOWLEDGE that the classical definition of Marxist Communism is best expressed in the socialist maxim: "The state shall take from each according to his ability and give to each according to his need." It is equally true yet not as commonly known that this same maxim is also a fair definition of what scholastics call that species of justice applicable to state activity—distributive justice.[1] Confusion is created in the minds of many so-called intellectuals by this apparent similarity of approach in respect to so fundamental a concept as state activity. This confusion is frequently evidenced by assertions, such as that of Rockwell Kent in his recently published autobiography, that Christian philosophy and Communism are actually identical.[2]

Such a deduction is patently absurd in view of the irreconcilable conflict between natural law and basic radical ideology. Proof of its absurdity lies in an explanation of the two basic differences which exist in the application of the maxim by these opposing philosophies. These differences can best be illustrated by an analysis of the scope of the distributive operations of a totalitarian state as compared with the scope of distributive justice within the framework of the natural law. Once the proper application of the maxim is established and several other current misconceptions of distributive justice have been corrected, we will be in a position to evaluate its functions in our modern society.

Totalitarianism teaches that man is made for the state and that the state is the source of all rights and property titles. It affords no recognition of any rights of the individual in his relations to the collectivity; it accords no natural right to the human personality. In man's relations with other individuals it teaches only the principle of absolute equality, re-

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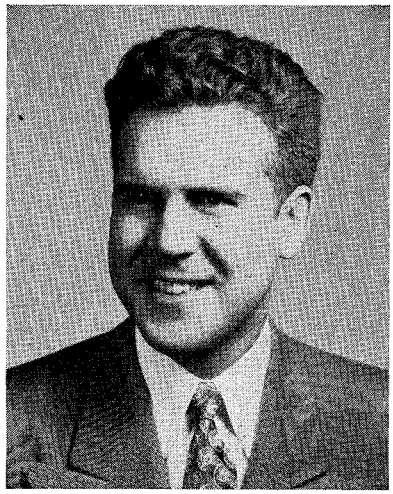
1 CRONIN, CATHOLIC SOCIAL PRINCIPLES 105 (1950).

2 KENT, IT'S ME, OH LORD 601 (1955).

jecting all hierachy and divinely constituted authority including the authority of parents. Whatever authority exists is that which is derived solely from the community. In the application of the maxim the totalitarian state demands the ultimate of productivity from each and in return allocates to each an identical share of the product. Since such a society is based solely on materialistic tenets, it becomes a collectivity with no other hierachy than that of the economic system.



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It has only one goal: the production of material things by collective labor. The participatory share or allocation which it distributes to the individual is therefore confined to a portion of material economic goods, identical in quantity and quality with that received by the other participants.

In contradistinction to this dialectical materialism, natural law holds that man is created by God to His Image and Likeness and is endowed with an immortal soul. This soul, being spiritual, is itself a whole, total and integral. By virture of this spiritual aspect of his nature, man is further endowed by his Creator with a natural right to all those things necessary to fulfill his destiny. Private ownership is normally necessary in order to live as a human being and hence is included in the natural rights.

Natural law teaches further however that man is essentially dual in nature. As a finite being with a material body he is dependent to a great extent upon the activity and association of other men for the full development of his physical, intellectual and moral potentialities. These social benefits are obtainable by him only through participation in joint endeavor with other men, all of whom are motivated by the same common desire—the attainment of earthly happiness. A group of individuals participating in such joint endeavor is called a natural society, by virtue of the fact that it has its origin in a dictate of human nature. Natural societies are either domestic, as exemplified by the family, or civil, which assumes its highest form in the complex organization of the sovereign state.

As Americans we recognize that the actual existence of the civil society which we call the State is dependent upon the free consent and mutual agreement of those individuals desiring its formation. However, it is important for us to realize that since the State is a dictate of human nature it is a moral necessity based upon the natural aptitude, propensity and need of man's rational being. The State therefore, in its essence, is independent of the human will and exists as a moral entity directed by God to achieve an end, with God-given natural rights and obligations predicated upon such end.

While the State consists of and in the individuals and families and exists for their

benefit, the good or end sought by the State differs from the individual or private good of its members. The proper end of the State is the public welfare or common good of the society as such. According to Josef Pieper it represents

> [T]he very essence of those good things for the sake of which a community exists and which it must attain and make a reality if it is to be said that all its potentialities have been brought to fruition.[3]

Although this social whole or State exists apart from the individuals, it is nevertheless composed of them and as such it is obligated to give them their just due. As component parts of a whole, the individual citizens are entitled to a share of the whole insofar as what belongs to the whole is due to the part. This whole which the citizens are entitled to share in by virtue of membership is not a physical, tangible substance which can be manufactured and a portion of which handed over to a person. It is not the obligation of the State to furnish temporal happiness ready-made to its citizens. Rather, the purpose of the State under natural law is to furnish to all its members the opportunity and the means, so far as is possible with the material at its disposal, for them to attain temporal happiness through self-activity. This is the true meaning of public welfare or the common good which is the whole in which the citizens are entitled to share. As so stated, the common good differs vastly from the material economic goods or social product which forms the whole to be distributed by the totalitarian state.

The nature of the citizen's participatory share is therefore the first basic difference in the application of the maxim by the two philosophies. Communism applies it to the allocation among the citizens of the production and distribution of material goods. The natural law applies it to an allocation among the citizens of the participation in the attainment of the common good.

The second basic difference in the maxim's application lies in the size of this participatory share as determined by the distributing state.

St. Thomas states that justice is a habit whereby a man renders to each one his due by a constant and perpetual will.[4] He says also that if the act of justice is to give to each man his due, then the act of justice is preceded by the act whereby something becomes his due.[5] It is clear therefore that no obligation to do justice exists unless it has as its presupposition this idea of the due or right. However, in the individual's relationship with the State, St. Thomas observes that nothing belongs to him as exclusively his; all that belongs to him is a share in something common to everyone.[6]

This due therefore, or claim of the citizen against the State, is not based upon an exclusive personal right as in the case of commutative justice. It is determined, St. Thomas believed, only by relating the thing's proportion to the person.[7] By this is meant that the claim of one to a participation in the common good can only be properly ascertained by an evaluation of the claimant.

The object and scope of distributive justice is now subject to concise statement.

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3 PIEPER, JUSTICE 87 (1955).

4 SUMMA THEOLOGICA, II-II, q. 58, art. 1, ad 6.

5 SUMMA CONTRA GENTILES, Bk. II, c. 28.

6 SUMMA THEOLOGICA, II-II, q. 61, art. 1, ad 5.

7 *Id.*, II-II, q. 61, art. 2, ad 3.

The ruler or authority in any natural society, must permit the individual member to participate in the realization of the end of that society (in the case of the State, the common good) but only in accordance with the measure of dignity, capacity and ability that is distinctively his. This is the size of the share which is due to the individual in distributive justice. This is what scholastics mean when they say, "From each according to his ability, to each according to his need."

Such application is far removed from the Communist principle of absolute equality which requires a distribution among the citizens of arithmetically equal amounts of external goods. It may still be argued however that the equality achieved by the Bolshevik application has a sounder basis in justice.

Support for this argument can even be found in the words of St. Thomas, who said that justice "denotes a kind of equality, as its very name implies; indeed we are wont to say that things are adjusted when they are made equal . . ."[8]

This very real difficulty is resolved when we realize that although all men are equal as moral entities, as human persons they are unequal in desires, capacities and powers. To allot them identical participatory shares in the realization of the common good would be to treat them unequally with regard to the requisites of life and self-development.

It is obvious that the equal moral claims of men, which admittedly arise out of their moral equality, must be construed in relation to public welfare as claims to participate in that degree of welfare necessary for the attainment of each claimant's private good. In the words of Pope Leo XIII, speaking in his Encyclical Rerum Novarum:

> There are truly very great and very many natural differences among men. Neither the talents, nor the skill, nor the health, nor the capacities of all are the same, and unequal fortune follows of itself upon necessary inequality in respect to these endowments.

In view of the tremendously broad scope of distributive justice, it is regrettable that within the sphere of particular justice the emphasis of the theology and philosophy manuals is altogether on commutative justice while distributive justice is usually dismissed in a few lines. In many cases there is a brief and inaccurate definition and no more. It is most commonly defined as:

> [T]hat species of justice which orders the dealings of society toward its members and inclines those in government to distribute equitably the common goods and burdens among the members of the commonwealth . . .[9]

As so stated, it conveys the erroneous impression that distributive justice is realized by the State through the equitable apportionment of community-owned tangible goods among its constituents, payment for which is collected in proportion to that which is received. Such a definition overlooks the basic feature of justice which requires that a due or a right exist as a prerequisite for obligation. Not even the Communists proclaim that the citizen has the right to demand external goods from the state purely by virtue of his citizenship.

This erroneous impression is corrected by properly defining distributive justice as:

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8 *Id.*, II-II, q. 57, art. 1, ad 3.

9 BITTLE, MAN AND MORALS 258 (1950).

that species of justice which obliges the authority to secure for each citizen his due and proportionate share of both the advantages and the burdens which are involved in the conduct of civil society. This definition expresses the true nature of the share to which the individual is entitled in distributive justice—a participatory share in the common good.

While criticism can justifiably be directed against the general lack of interest and unscholarly treatment which has allowed the virtue of distributive justice to almost disappear from the field of morals, equal criticism must be directed against those who seek to extend the virtue beyond its proper scope. Recently, the idea of distributive justice has been applied to create distributive obligations in other than those who are primarily intrusted with the custody of the common good. The argument has been made that its canons should apply to all distributions of a common fund and that the basis of all distributive right is the fact that a group of persons have a right to a divisible good. The work of distributive justice would therefore be to determine the share of each.[10]

The late Monsignor John Ryan was one of the proponents of this approach. His authoritative treatise, *Distributive Justice,* was based upon the assumption that profits per se represent a common fund and that the employer has the obligation in distributive justice to equitably apportion the fund to the various factors involved in production, including labor.

Monsignor Ryan was undoubtedly correct in his conclusion that distributive justice can be applied to other than the perfect society which is the State. Although in its traditional usage the term is applied to rulers of states, it is equally applicable to the head or ruler of all natural societies. It requires them, in respect to their authorized activity, to permit individual participation in the attainment of the social end. He was incorrect however when he applied it to those intrusted with property other than that which is commonly owned by all members of a natural society. By so doing, he sought to establish that all profits are immediately a part of the common good. This overlooks the qualifications which arise out of the natural right of private ownership.

It is therefore fallacious to say that a worker has a right to an equitable share of profits, arising out of distributive justice. It might however be held that in social justice, such a distribution would, under certain conditions, promote the common good. This would not give the worker any general and unqualified right to participate in profits. It would apply only in such cases where an institution of this nature would promote the general welfare.

Proof of the inaccuracy of Monsignor Ryan's position may be found in the words of Pope Pius XII in his 1949 address to Catholic employers. He stated:

> It would be just as untrue to assert that every particular business is of its nature a society, with its personal relationships determined by the norms of distributive justice to the point where all without distinction—owners or not of the means of production—would be entitled to their share in the property, or at the very least in the profits, of the enterprise. Such a conception stems from the assumption that

[10] O'DONOGHUE, *The Scope of Distributive Justice,* 21 IR. THEOL. Q. 291, 300 (1954).

every business belongs naturally within the sphere of public law. The assumption is inexact.

The most important single conclusion which has been established at this point is the fact that the citizen's capacities and abilities are a part of the "good" of society. Distributive justice therefore entails the obligation of granting such abilities the protection, support and fostering they need for their full development. Such a conclusion, if stated thirty or forty years ago, in the climate of rugged individualism, would have been branded as almost subversive. In that era, the vast majority of Americans, both rich and poor, shared the belief that the state had no real role to play as guarantor of the citizen's good.

Today however, we have passed from this climate into the new climate of welfare. There has been an evolution of a new kind of American conservative and a new philosophy for the American business community. It is one which fosters a viewpoint that now takes pension and welfare plans for granted as common industrial practice and can even contemplate such ventures as guaranteed annual wages without danger of apoplexy. Politically, the classical tenets of pure free enterprise have given way to a new state doctrine which has its foundations in the tenets of welfare and finds expression in social legislation which tends to encourage rather than stifle free enterprise.

This whole new approach is predicated upon the assumption that the State has a duty in distributive justice to intervene when social conditions threaten serious harm to the welfare of its citizens or any substantial group within the community. Because of the centuries of individualism, the State is currently forced to act in countless situations where adverse social conditions have been established. Until organic reform is achieved, such social legislation is not only legitimate but necessary. Admittedly however, emphasis should be upon a fundamental change in our social structure in favor of smaller, self-governing societies. This is particularly true in connection with economic society since the state is not the agency to promote ideal economic conditions. In can coerce an economic community on civil terms but it cannot stimulate from within by supplying the motives for efficient personal effort.

In making the determination as to the government's role in specific cases, where the question arises as to whether obligations in distributive justice exist, a sympathetic understanding of the principle of subsidiarity is imperative if rational decisions are to be made. However, with society becoming more complex and interdependent, many functions once performed by private initiative can today be accomplished adequately and efficiently only with the resources and under the direction of the organized state. As the present Pontiff declared:

> [N]o one of good-will and vision will think of refusing the State, in the exceptional conditions of the world today, correspondingly wider and exceptional rights to meet popular needs.[11]

Specific cases and concrete problems are what we face however and our main interest lies in solutions in the practical order of administration. With this in mind, let us

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[11] ENCYCLICAL LETTER ON THE FUNCTION OF THE STATE IN THE MODERN WORLD (SUMMI PONTIFICATUS) [1939].

attempt to evaluate some of the current activities of our own government and its officials in light of the principles of distributive justice already established.

Taxation is the primary method employed by our government for distributing the burdens involved in maintaining the common good. So far as the common good allows, distributive justice requires that taxes should not be directly proportionate to incomes, nor levied on a scale increasing at a constant rate, but on a scale whose rate of increase gradually diminishes until at the upper limit it approximates to a proportional tax. Such a tax may be called "progressive." In theory, the ideal would be a single progressive tax on income but in practice a part of the public revenue must be obtained through hidden taxes which are more willingly accepted and do not so easily become oppressive.

The canons of equality of sacrifice and payment according to ability require progressive income taxes which concentrate upon the wealthier classes. On the other hand, a dynamic system of expanding economy requires retention of the profit incentive and a stimulation of investment. Both these factors must therefore be balanced in working out a just system which will achieve a true proportional due in respect to the individual tax burden.

Tax experts are in disagreement as to the degree of progression in the existing American system of taxation. All are in agreement however that the principle of progression is currently employed.[12] The most important consideration in the tax area in regard to distributive justice therefore is the proposed 23rd amendment to the Constitution which is currently undergoing consideration by various state legislatures. The proposal seeks to repeal the 16th Amendment and reinstate that Amendment with the limitation that "in no case shall the maximum aggregate rate of tax exceed 25% on incomes, estates, and gifts." The taxes directly affected are the most progressive elements in the federal tax structure. A limitation on the rates of these taxes would reduce the extent to which federal taxes could be distributed in accordance with taxpaying ability. Such a proposal is therefore offensive to the principles of distributive justice, and unless it is established that the measure is absolutely necessary for the common good, the American people should reject it in its entirety.

Switching now from burdens to benefits, we find it firmly established in American tradition that the good of the community lies, in part, in economic freedom. Under a system of economic freedom however, if there are no safeguards for the individual, the costs are largely in terms of insecurity growing out of the dynamic nature of a free system.

Distributive justice therefore demands that in this free system there exist such government programs as unemployment insurance, social security, housing, collective bargaining, bank deposit insurance, securities regulation and agricultural price supports. Our government is presently complying with all these demands,—the extent of the compliance depending upon the development stage of the particular program.

Motivated by the same obligation, the role which the government has taken in resource development has opened the way to further private economic activity. The

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12 PAUL, TAXATION IN THE UNITED STATES 762 (1954).

peaceful development of atomic energy has been made available to private initiative. A vigorous anti-trust law enforcement has prevented monopoly power from exerting its corrosive influence. The dignity of labor and its contribution to the common good has been recognized in "Right to Work" legislation.

The common good however extends far beyond the existence of opportunities for the attainment of material goods. The government has the responsibility for insuring adequate care and treatment for the sick, disabled and mentally retarded. Various proposals for government sponsored medical and hospitalization insurance are presently under consideration as supplements to our already gigantic public health program.

The area of education is also properly a part of the common good. Although the State must respect the reasonable wishes of the parents who have the fundamental right to educate their children, it must insure the educational rights of the family and of those groups which are the agents of the family in education. Employing the principle of subsidiarity, the state has the duty to do in education whatever the family and its agents cannot do. It is part of the common good that citizens achieve at least a certain minimum cultural level. Our government has provided a religiously neutral public school system in compliance with this obligation.

Unfortunately, the financing aspect of this public school system is violative of principles of distributive justice in that it requires Catholic parents to support Catholic parochial schools entirely at their own expense. As Pope Pius XI said of the American parochial school system in his Encyclical on Christian Education:

> Such education is not aided by public funds, as distributive justice requires.

It has been suggested that this objection can be overcome by government subsidies to children whose parents cannot conscientiously enroll them in the public schools.[13] It was in this way that the Veterans Administration subsidized the education of veterans after World War II.

It is important to note that justification for all this government activity has been based solely upon obligations arising in distributive justice. Since distributive justice seeks, not directly the common good of society, but rather the proportionate sharing among its members of the benefits and burdens included in the common good, it is equally important to realize that this species of justice has only individual rights as its object.

St. Thomas writes: "The common good takes precedence over the private good, if it be of the same genus."[14] Accordingly, it is conceivable that a practice favored by distributive justice might not be prudent in the light of the common good. Thus, as previously mentioned, if it is absolutely necessary that a large sum of money be immediately raised for government expenditures, the common good might demand a tax policy with a broad base, rather than one concentrated on those most able to pay. So also, "Right to Work" legislation might conceivably be detrimental to the common good as creating obstacles to effective labor

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[13] MULLANEY, *The Natural Law, The Family, and Education,* 24 FORDHAM L. REV. 102, 115 (1915).

[14] SUMMA THEOLOGICA, I-II, q. 152, art. 4, ad 3; see also I-II, q. 113, art. 9, ad 2.

organization. In such cases, social justice, which seeks the common good, would take precedence.

In conclusion, I should like to discuss for a moment the vice which is contrary to distributive justice—namely, the respect of persons. By respect of persons I mean allotting to a person more than that proportion of the common good which in justice is his due. This is the vice which is most commonly found in our government officials.

It is particularly in the appointment of applicants to government positions that the virtue of distributive justice must be practiced. It is the duty of the official authorized to make these appointments, to choose those individuals whom he honestly considers most worthy and most capable from among those available. Although in making some appointments the one in charge may take into consideration the political creed of the persons selected, such as Cabinet appointments, the vast majority of appointive positions require the one most likely to give the most effective service toward the common good.

> . . . [O]ne who makes such appointments would fail against distributive justice if he based his choice, not on worth or ability, but on personal friendship or the advantages he can gain for himself or the party by the selection of certain persons.[15]

It may well be that the remedy for this evil lies not only in teaching some politicians their moral responsibilities but also in educating the general public to a greater moral awareness. If public opinion upon corruption is so clear that the politician proven corrupt vanishes from public life, then corruption will become exceptional.

Having opened this paper by posing and answering the question raised by the ostensible similarity of Communist principles with those of distributive justice, I think it fitting and appropriate to close with an equally provocative question: Is man, by the operation of a particular State, more of a man or less of a man?—If the answer is that man is perfected in his social nature, then it is safe to assume that distributive justice has been achieved by that State.

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15 CONNELL, *Morality and Modern Politics,* 4 THOUGHT PATTERNS 77 (1953).